Hovsepian v. Apple, Inc. Doc. 127

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

In re: **ACACIA MEDIA TECHNOLOGIES CORPORATION,**	**Case No. C 05-01114** **MDL No. 1665** **[PROPOSED] ORDER RE: SUMMARY JUDGMENT OF NON-INFRINGEMENT AND INVALIDITY FOR INDEFINITENESS OF U.S. PATENT NO. 6,144,702** Date: February 24, 2006 Time: 9:00 a.m. Courtroom: 8, 4th Floor Judge: Honorable James Ware

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Having reviewed and considered Acacia's Motion for Entry of Judgment of Noninfringement and Invalidity for Indefiniteness of US Patent No. 6,144,702 and Certification Pursuant to Fed. R. Civ. P. 54(b) ("Acacia's Motion"), all supporting and opposing papers, and arguments of counsel, the Court hereby finds that:

On December 7, 2005, the Court issued its "Further Claim Construction Order; Order Finding Claims Terms Indefinite And Claims Invalid" ("Order"). In the Order, the Court found, among other things, the following:

1. that the claim term "sequence encoder," which appears in independent claims 1 and 17 and in dependent claims 7, 18, 32, and 33 of U.S. Patent No. 6,144,702 ("the '702 patent"), is indefinite;
2. that the claim term "identification encoder," which appears in independent claims 1, 17, and 27 and in dependent claims 5, 6, 19, and 31 of the '702 patent, is indefinite; and
3. that the claim phrase "transmission system at a first location," which appears in independent claims 1, 17, and 27 of the '702 patent, means "a transmission system at one particular location separate from the location of the reception system."

In Acacia's Motion, Acacia has admitted that the Court's findings that the terms "sequence encoder" and "identification encoder" are indefinite, renders all of the claims of the '702 patent (claims 1-42) indefinite, and therefore, invalid, under 35 U.S.C. § 112, ¶ 2. *See Acacia's Motion* at 2. Further, Acacia has also admitted that the effect of the Court's construction of the phrase "transmission system at a first location" as meaning "a transmission system at one particular location separate from the location of the reception system," renders all of the claims of the '702 patent (claims 1-42) not infringed by the defendants in this MDL case. *Id.*

The Court also finds that Acacia's Motion has not shown that a Rule 54(b) judgment is in the interest of sound judicial administration.

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ACCORDINGLY,

(1) Summary judgment of invalidity for indefiniteness of claims 1-42 of U.S. Patent No. 6,144,702, and of non-infringement of claims 1-42 of U.S. Patent No. 6,144,702, is ENTERED in favor of all defendants, and against Acacia.

(2) Acacia's request for an entry of judgment pursuant to Fed. R. Civ. P. Rule 54(b) is DENIED.

SO ORDERED.

Dated: ______ __, 2006

Hon. James Ware
United States District Court Judge

Presented by:

JONES DAY

By /s/ Victor G. Savikas
Victor G. Savikas

Attorneys for Defendant
DIRECTV GROUP, INC.